

3.01 DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult if you find it necessary.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return--that is a matter entirely up to you.

3.02 USE OF NOTES

You may use notes taken during trial to assist your memory. Notes, however, should not be substituted for your memory, and you should not be overly influenced by the notes.

3.03 WHAT IS EVIDENCE

The evidence from which you are to decide what the facts are consists of:

1. the sworn testimony of witnesses, on both direct and cross-examination, regardless of who called the witness;
2. the exhibits which have been received into evidence; and
3. any facts to which all the lawyers have agreed or stipulated.

3.05 WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.
3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony may have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.
4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

3.06 DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. For example, the witness testifies “I saw Joe break the glass.” Circumstantial evidence is proof of one or more facts from which you could find another fact. For example, the witness testifies “I saw Joe holding the glass before I left the room. No one else was in it. When I returned, the broken glass was lying at Joe’s feet.” You could find that Joe had broken the glass in either example. You must consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

3.07 CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

DISCREPANCIES IN TESTIMONY

Discrepancies in a witness's testimony or between such witness's testimony and that of other witnesses, if there were any, do not necessarily mean that any witness should be discredited. Failure of recollection is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to an important matter or only to something trivial should be considered by you.

5.01 BURDEN OF PROOF - PREPONDERANCE OF THE EVIDENCE

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true. This means that if you conclude that the weight of the evidence on a claim is even, you must find for the defendant. If you conclude that the weight of the evidence favors the plaintiffs, even slightly, you must find for them.

You should base your decision on all of the evidence, regardless of which party presented it.

PLAINTIFFS' CLAIMS

Plaintiffs Edward Fowler and Renee Spencer are asking for damages sustained by them as the result of the alleged deprivation of certain rights guaranteed to them by the Constitution and laws of the United States. This claim is brought under a federal statute, Section 1981 of Title 42 of the United States Code.

Plaintiffs also seek recovery of damages they sustained as a result of World's alleged breach of the implied covenant of good faith and fair dealing. This claim is brought under California state contract law.

SECTION 1981

Section 1981, which is also known as the Civil Rights Act of 1866, provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

PURPOSE OF THE STATUTE

The purpose of section 1981 is to protect individuals in the full enjoyment of the rights of person and property by prohibiting all racially motivated discrimination, both public and private. Section 1981 guarantees each person, regardless of race, freedom from discrimination in the making and enforcing of contracts. If, because of his or her race, a plaintiff was denied the right to contract entirely, or was given less opportunity to contract, or was offered less favorable contractual terms or unequal treatment so as to discourage plaintiff from entering the contract, he or she has a claim under section 1981.

ELEMENTS AND BURDEN OF PROOF ON SECTION 1981 CLAIM

To prevail on their section 1981 claim against World Savings, the plaintiffs must prove the following by a preponderance of the evidence:

1. That plaintiffs and defendant negotiated for and entered into a contract regarding the property at 49 Bromley Court;
 2. That the plaintiffs were ready, willing, and able to negotiate and to carry out their obligations under the contract;
 3. That World deprived plaintiffs of the right to make and enforce the contract with respect to 49 Bromley Court;
 4. That, by and through its conduct, World intentionally or purposefully discriminated against plaintiffs in whole or in part because of their race.
- Plaintiffs do not have to establish that racial discrimination was the sole basis for the defendant's treatment of them. As long as defendant had some intent to discriminate against plaintiffs because of their race, the defendant can be found to have acted with sufficient discriminatory intent even if defendant had other legitimate reasons for its conduct.

If as to any particular component of this claim, the plaintiffs have failed to prove each of the elements on which they have the burden of proof, your verdict should be for the defendant.

INTENTIONAL AND PURPOSEFUL ACTS DEFINED

An act is intentional if it is done knowingly--that is, if it is done voluntarily and deliberately and not because of mistake, accident, neglect or other reason.

An act is purposeful if it is done with a conscious design, intent, or plan that it be done.

In determining whether defendant purposefully or intentionally discriminated against plaintiffs on the basis of their race, you may consider direct and circumstantial evidence of intent.

6.2 LIABILITY OF CORPORATIONS

Under the law, a corporation is considered a person. But a corporation can only act and speak through its employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts and statements of each of its employees, agents, directors, and officers performed within the scope of authority.

DAMAGES FOR DEPRIVATION OF CIVIL RIGHTS

It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, I do not mean to suggest for which party your verdict should be rendered.

If you find for the plaintiffs against defendant on the § 1981 claim, you must determine the plaintiffs' damages. Plaintiffs have the burden of proving damages by a preponderance of the evidence. Damages means the amount of money which will reasonably and fairly compensate the plaintiffs for the deprivation of civil rights proximately caused by the defendant. You should consider the following:

The nature and extent of the plaintiffs' injuries.

The loss of enjoyment of life experienced, and which with reasonable probability will be experienced by the plaintiffs in the future.

The mental, physical, emotional pain and suffering experienced and which with reasonable probability will be experienced by the plaintiffs in the future.

Such sum as will reasonably compensate plaintiffs for any loss in equity of the property.

If you find that a plaintiffs' constitutional rights were violated, but you find that the plaintiffs have failed to prove actual damages, you shall return an award of nominal damages not to exceed one dollar as to each plaintiff.

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

The plaintiffs' second claim is based on World's purported contractual obligation to the plaintiffs. Under California law, every contract contains an implied promise by each party not to do anything that will deprive the other contracting parties of the benefits of the contract. This promise imposes on each contracting party the duty to refrain from doing anything which would render performance of the contract impossible. It also imposes a duty on each party to do everything that the contract presupposes that party will do to accomplish the contract's purpose. This promise is sometimes referred to as the implied covenant of good faith and fair dealing.

ELEMENTS AND BURDEN OF PROOF OF THE BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

To prevail on their claim for breach of an implied covenant of good faith and fair dealing, the plaintiffs must prove the following by a preponderance of the evidence:

1. That the plaintiffs entered into a contract, such as a mortgage agreement and subsequent modifications thereto, with World;
2. That the plaintiffs tendered performance of their existing obligation under the contract;
3. That the cooperation of World was necessary for successful performance of the plaintiffs' obligation;
4. That World failed to give the necessary cooperation or did something that prevented realization of the fruits of the plaintiffs' attempted performance; and
5. That World's conduct caused the plaintiffs to suffer injury, damage, loss or harm.

If as to any particular component of this claim, the plaintiffs have failed to prove each of the things on which they have the burden of proof, your verdict should be for the defendant.

When World became the owner of the 49 Bromley Court property on June 11, 1993, World was bound by the terms of Plaintiffs' February 1989 lease. Accordingly, as of that date, Plaintiffs had a right to stay in the property as tenants of World through January 1994. Plaintiffs also had an option to buy the property. When World filed its unlawful detainer action in 1993, it disputed that plaintiffs had these rights. The unlawful detainer action was then settled.

Plaintiffs can no longer assert a claim that in 1993, World did not honor the lease and tried to evict them in violation of the covenant of good faith and fair dealing contained in the lease. Your consideration of the evidence you heard on this issue shall be limited to two purposes. First, you may consider this evidence for the purpose of understanding the context in which the parties acted towards each other at later times. Second, you may consider this evidence for the purpose of determining whether World violated plaintiffs' rights protected by 42 U.S.C. section 1981.

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING - DAMAGES

The measure of damages for any breach of the implied covenant of good faith and fair dealing is that amount which will compensate the injured party for all the detriment or loss caused by the breach, or which in the ordinary course of things, would be likely to result therefrom. The injured party should receive those damages naturally arising from the breach, or those damages which might have been reasonably contemplated or foreseen by both parties, at the time they made the contract, as the probable result of the breach. As nearly as possible, the injured party should receive the equivalent of the benefits of performance.

Damages must be reasonable. The plaintiffs cannot recover a greater amount as damages than they could have gained by the full performance of the contract.

3.14 DUTY TO DELIBERATE

When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully and with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

3.13

COMMUNICATION WITH COURT

If it becomes necessary to communicate with me during deliberations, you may send a folded note through the marshal or clerk, signed by a juror. Do not disclose the content of your note to the marshal or clerk.

Do not communicate with the court about the case except by a signed note. I will only communicate with you regarding the case in writing or in open court.

Do not disclose any vote count in any note to the court.

3.15 RETURN OF VERDICT

After you have reached unanimous agreement on a verdict, your foreperson will fill in, date, and sign the verdict form or forms and advise the marshal in whose charge you will be that you have reached a verdict.